

105TH CONGRESS
2D SESSION

S. 2298

To provide for enforcement of title II of the Civil Rights Act of 1968,
commonly known as the “Indian Civil Rights Act”.

IN THE SENATE OF THE UNITED STATES

JULY 14, 1998

Mr. GORTON introduced the following bill; which was read twice and referred
to the Committee on Indian Affairs

A BILL

To provide for enforcement of title II of the Civil Rights
Act of 1968, commonly known as the “Indian Civil
Rights Act”.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Indian Civil Rights
5 Enforcement Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) title II of the Civil Rights Act of 1968 (25
9 U.S.C. 1301 et seq.) (commonly known as the “In-
10 dian Civil Rights Act”) was enacted to protect the

1 civil rights of individuals who interact with tribal
2 governments and other tribal organizations;

3 (2) individuals who interact with tribal govern-
4 ments and other tribal organizations continue to suf-
5 fer civil rights abuses, including unfair dismissals
6 from employment with a tribal government or other
7 tribal organization, election irregularities, and im-
8 proper use of law enforcement authority;

9 (3) a 1991 report of the United States Commis-
10 sion on Civil Rights found that the enforcement of
11 rights guaranteed by the Act commonly known as
12 the “Indian Civil Rights Act” continued to be im-
13 peded by reluctance among Indian tribes to waive
14 tribal immunity;

15 (4) Congress has considered the impediments to
16 enforcing the Act commonly known as the “Indian
17 Civil Rights Act” for a period preceding the date of
18 enactment of this Act of more than 10 years;

19 (5) under article III of the Constitution of the
20 United States, individuals have the opportunity to
21 seek action in a district court of the United States
22 after exhausting remedies in tribal courts for en-
23 forcement of the Act commonly known as the “In-
24 dian Civil Rights Act”; and

1 (6) to provide for the opportunity referred to in
2 paragraph (5), tribal immunity should be waived.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) INDIAN TRIBE.—The term “Indian tribe”
6 means any Indian tribe or band with a governing
7 body duly recognized by the Secretary of the Inte-
8 rior.

9 (2) TRIBAL GOVERNMENT.—The term “tribal
10 government” means a governing body of an Indian
11 tribe referred to in paragraph (1).

12 (3) TRIBAL IMMUNITY.—The term “tribal im-
13 munity” means the immunity of an Indian tribe
14 from jurisdiction of the courts, judicial review of an
15 action of that Indian tribe, and other remedies.

16 (4) TRIBAL ORGANIZATION.—The term “tribal
17 organization” has the meaning given that term in
18 section 4(l) of the Indian Self-Determination and
19 Education Assistance Act (25 U.S.C. 450b(l)).

20 **SEC. 4. INDIAN CIVIL RIGHTS ACT ENFORCEMENT.**

21 Title II of the Civil Rights Act of 1968 (commonly
22 known as the “Indian Civil Rights Act”) (25 U.S.C. 1301
23 et seq.) is amended by adding at the end the following:

1 **“SEC. 204. ENFORCEMENT.**

2 “(a) IN GENERAL.—The district courts of the United
3 States shall have jurisdiction in any civil rights action al-
4 leging a failure to comply with rights secured by the re-
5 quirements of this title.

6 “(b) COMPLIANCE.—Upon exhaustion of remedies in
7 a tribal court of appropriate jurisdiction (if any) to seek
8 compliance with rights secured under this title as are time-
9 ly and reasonable, an aggrieved individual may bring an
10 action against an Indian tribe (including a tribal organiza-
11 tion (as that term is defined in section 4(l) of that Act
12 (25 U.S.C. 450b(l)) or official of that Indian tribe)) in
13 a district court of the United States, or the Attorney Gen-
14 eral of the United States may bring such an action against
15 an Indian tribe for—

16 “(1) a declaratory judgment; or

17 “(2) equitable relief (including injunctive relief)
18 against an Indian tribe, to the extent necessary to
19 enforce the rights secured under this title.

20 “(c) TREATMENT OF FINDINGS OF TRIBAL
21 COURT.—

22 “(1) IN GENERAL.—In a civil action brought
23 under subsection (b), the district court shall adopt
24 any findings of fact made by the tribal court in-
25 volved (if any) with respect to the action, unless the
26 district court determines that—

1 “(A) the tribal court did not operate inde-
2 pendently from the legislative or executive au-
3 thority of the Indian tribe involved;

4 “(B) the tribal court was not authorized to
5 determine matters of law and fact, or the tribal
6 court did not fully determine those matters;

7 “(C) the tribal court permitted a person or
8 entity subject to this title to assert a defense of
9 immunity in a declaratory action or an action
10 to seek equitable relief;

11 “(D) the tribal court failed to resolve the
12 merits of the factual dispute involved;

13 “(E) the tribal court employed a factfind-
14 ing procedure that was not adequate to afford
15 a full and fair hearing;

16 “(F) the tribal court did not adequately
17 develop facts that are material to the case;

18 “(G) the tribal court failed to provide a
19 full, fair, and adequate hearing; or

20 “(H) the factual determinations of the
21 tribal court are not fairly supported by the
22 record.

23 “(2) DE NOVO REVIEW.—In any action de-
24 scribed in paragraph (1), if the court finds that a
25 condition described in subparagraph (A), (B), (C),

1 (D), (E), (F), (G), or (H) of that paragraph applies,
2 the district court shall conduct a de novo review of
3 the allegations contained in the complaint.

4 “(d) WAIVER OF TRIBAL IMMUNITY.—To the extent
5 necessary to enforce this title, the tribal immunity (as that
6 term is defined in section 3 of the Indian Civil Rights En-
7 forcement Act) of an Indian tribe subject to an action
8 under subsection (b) is waived.”.

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